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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,716	02/10/2000	Kazuichi Ooe	1046.1209/JDH	4289

21171 7590 07/12/2005

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EXAMINER

TSEGAYE, SABA

ART UNIT PAPER NUMBER

2662

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/501,716		OOE, KAZUICHI	
	<b>Examiner</b>		<b>Art Unit</b>	
	Saba Tsegaye		2662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. This Office Action is in response to the amendment filed on 02/04/05. Claims 1, 2, 6 and 8 are pending. Currently no claims are in condition for allowance.

### *Specification*

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### *Claim Rejections - 35 USC § 102*

3. Claims 1, 2, 6 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Parker (US 6,603,755).

Regarding claims 1, 2 and 6, Parker discloses a communications method of performing communications by switching over a plurality of communication modes (column 2, lines 40-44; column 5, lines 26-30), comprising:

measuring a communication performance between a plurality of communication devices connected to a network based on each of the communication modes under a plurality of communication conditions (**multi mode mobile terminals and service providers are connected to a network; if a service provider selected for a particular communication mode maps into a service provider preference level classification that falls into the unsuitable category, then a service provider is selected for an alternative communication mode using a**

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**selection methodology or protocol specific to that communication mode** (column 7, lines 5-17)).

obtaining a condition-based optimum communication mode in which the communication performance in one of the communication modes of one of the communication devices, exceeds a communication performance in other communication mode per communication condition of the one of the communication devices (**mobile terminals allow multiple communication modes to be surveyed to locate a suitable or desirable communication service provider by comparing the preference level with the adjustable threshold to determine whether the preference level is above or below the threshold**) (column 7, lines 25-34; column 3, lines 4-9);

selecting the condition-based optimum communication mode in accordance with the communication condition when in communications, and thus performing the communications between the communication devices based on the condition based optimum communication mode of the one of the communication devices (column 7, lines 35-39).

Regarding claim 8, Parker discloses a communications device further comprising;  
a storage unit (54) storing the condition-based optimum communication mode (column 7, lines 47-58),

wherein the performance measuring module measures the communication performance in the communications with other communications device if not stored with the condition-based optimum communication mode in the communications with the other communications device when performing the communications with the other communications device (column 7, line 47-column 8, line 6), and

the optimum mode-obtaining module obtains the condition-based optimum communication mode (column 7, line 47-column 8, line 6).

### ***Response to Arguments***

4. Applicant argues (Remark, page 5) that Parker fails to disclose “measuring a communication performance between a plurality of communication devices connected to a network, based on each of the communication modes under a plurality of communication conditions”. Examiner respectfully disagrees. Parker clearly discloses that multi mode mobile terminals are communicated using different service provider in a multiple communications mode environment (see figs. 1 and 4). Service selection program uses a service provider selection model for classifying service providers along a continuum of common service provider preference levels. As shown in fig. 7, first, the service selection program selects a primary communication mode to use for establishing service by using table as shown in fig. 8; further, block 96, the service selection program determines whether the classification of the highest classified service provider for the currently selected communication mode is suitable to allow service to be acquired from this service provider. It is respectfully submitted that the claims as they currently stand read in the Park reference.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saba Tsegaye whose telephone number is (571) 272-3091. The examiner can normally be reached on Monday-Friday (7:30-5:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ST  
July 9, 2005

  
**JOHN PEZZLO**  
**PRIMARY EXAMINER**